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File No. O. Motor/51
Legal Department
A **BRANCH**

6/7 **Subject:—** Opinions under the Motor Vehicles Act, 1939.

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M.V.V.
3/7.

L.D.R.I.No.24815,dt. 19.12.1950.

Submitted with reference to H.D. note at page 17 ante.

2. As Shri Sadadin Merudin, ~~xxxxxxx~~ holding motor driving license No.43543 was convicted under section 325, Indian Penal Code and under section 116 of the Motor Vehicles Act, 1930 and sentenced to undergo rigorious imprison - ment for four months and fined Rs. 200/- in default to undergo R.I. for two months respectively by the Presidency Magistrate, Kurla on 20.12.1949 the Regional Transport Authority, Bombay, after ~~xxxxxx~~ taking into consideration his previous record, decided by order No. 3564/23 A of 1950, to disqualify him for holding or obtaining an authorisation to drive public service vehicle for a period of fifty years from the date of the service of the order, Shri sadadin appealed to the State Transport Authority against the order of the R.T. Authority, but the appeal was rejected and the decision of the latter - was upheld. Shri Sadadin has now appealed to Government against the decision of the appellate Committee of the State Transport Authority. The Secretary, State Transport Authority, is of the view that Government cannot entertain the appeal in question inasmuch as under the Indian Motor Vehicle Act, 1939 or the rules made thereunder, there is no provision for a second appeal to Govt. ~~xx~~ against the State Transport Authority , Bombay. R.L.A. has been requested to state whether the view expressed by the Secretary, S.T.A., ~~xxxxx~~, is correct.

4 Cs.
M.V.V.
27/6

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Office of the R.L.A.

The Motor Vehicles Act, 1939.

Section 16(2)

Bombay Motor Vehicles Rules, 1940. rule 7(2).

The view taken by the Secretary, State Transport Authority is correct.

Sd/- P.M.Lad,
5/1/51.

Remembrancer of Legal Affairs.

U.R. to H.D. No.463, dated the 8th January 1951.

4-Cs.

M.V.V.
28/6.

Office of the R.L.A.

Motor Vehicles Act , 1939, Section 38(1), 22 etc. Bom. Motor Vehicles Rules 1940, rule 31(1).

Whether inspection of transport vehicles of the B.E.S.T. can be dispensed with.

Sub-section (1) of section 38 of the Motor Vehicles Act, 1939, provides that a transport vehicle shall not be deemed to be validly registered for the purposes of section 22 unless it carries a certificate of fitness in Form H in the First Schedule issued by the prescribed authority. Rule 31(1) of the Bombay Motor Vehicles Rules, 1940, which has been ~~xx~~ made for this purpose provides that certificates of fitness shall be granted and renewed by ~~the~~ Inspectors of Motor Vehicles subject to the general control and direction of the appropriate registering authority. The form of the certificate itself in the First Schedule is to be the following effects :-

"Vehicle No.....is certified as complying with the provisions of Chapter V of the Motor Vehicles Act, 1939, and the rules made thereunder. ————————"

This certificate is required to be signed by the Inspecting Authority. It is true that rule 31(1) empowers the register - ing authority to exercise general control and issue directions to the Inspector of Motor Vehicles who is authorised to issue certificates of fitness. But in exercise of this power the registering authority cannot direct the Inspector to issue corrificates of fitness on the strength of examinations carried out by officers of the B.E.S.T. Although the form of the certificates in Form H in the First Schedule to the Act does not refer specifically to the examination of the vehicle, an inspection thereof by the Motor Vehicles Inspector is implied. The form also requires that it shall be signed by the "Inspecting Authority". The vehicle is required to be certified as complying with the provisions of Chapter V of the Act. That Chapter provides how a vehicle shall be constructed, equipped and maintained so as to be at all times under the effective control of the person driving it. It

could.....

could not have been the intention of the Act that a certificate in respect of these matters could be issued without an inspection of the vehicle by the certifying officer and without his having been satisfied about the fitness. The proposal made by the State Transport Authority does not therefore appear to be legally feasible. The object in view can be achieved only by suitably amending the provisions of the Motor Vehicles Act.

Sd/- P.M.Lad,
22/1.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1432, dated the 23rd January 1951.

4-Cs.

M.V.V.
27/6.

Office of the R.L.A.

Motor Vehicles Act, 1939. Sects. 3(1) & 22(1).

Constitution of India article 362.

Whether Rulers are required to take out driving licences and exhibit registration marks on their cars etc.

The Government of India, Ministry of Transport, in their letters at pp. 1 and 3 ante have pointed out that the following concessions should be extended to Rulers of States who under the Agreements of merger have been guarnateed certain rights and privileges which they used to enjoy before :

1) Taking out of motor driving licences by the Rulers should not be insisted upon.

2) Use of red number plates in place of or in addition to the State Registration plates.

The question raised for the consideration of the R.L.A. is whether the privileges can be given effect to by mere executive instructions or whether it is necessary to relax or amend the Bombay Motor Vehicles Rules, 1940.

2. Sub-section (1) of section 3 of the Motor Vehicles Act, 1939, provides that no person shall drive a motor vehicle in any public place unless he holds an effective licence issued to himself authorising him to drive the vehicle. Similarly sub-section (1) of section 22 imposes a restriction on the driving of a vehicle unless the same is registered in accordance with Ch. III and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. It is true that no exceptions are provided for to these requirements. But the restrictions imposed by these provisions cannot be said to apply to the Rulers who, before merger, were not amenable to any such laws and whose privileges in this behalf have been recognized in the agreements of merger. Moreover article 362 of the Constitution requires that in the exercise of the legislative or executive power of a State due regard shall be had to the guarantee under the agreements as regards the personal rights, privileges and dignities

of.....

of the Rulers. For these reasons it does not appear necessary to amend either the Act or the Rules. There is no objection to issuing executive orders as proposed.

Sd/- P.M.Lad,
31/1.
Remembrancer of Legal Affairs.

U.R. to H.D. ~~xx~~ No. 1948, dated the 1st Feb. 1951.

4-Cs.

M.V.V.
27/6.

Legal Department.

Motor Vehicles Act, 1939. Sections 64(b)(f), 60(1) etc.

Appeal No.124 of 1950 before the Appellate Committee of the State Transport Authority was presumably preferred under section 64(b) of the Motor Vehicles Act, 1939. The Chairman of the Appellate Committee referred the matter back to the Regional Transport Authority as the appellant Babu Mathuraprasad Roy had not been given an opportunity to submit his explanation as required by the proviso to sub-section (1) of section 60 of the Act. Under clause (f) of section 64 of the Act a local authority or an association who having opposed the grant of a permit is aggrieved by the grant thereof can prefer an appeal to the prescribed authority. Under rule 75 of the Bombay Motor Vehicles Rules, 1940, an appeal against the State Transport Authority's order lies to the State Government. It is true that the parties in this case, Shri P.G.Bhandari and the Sarpanch are representing the interests of the Tongawala Association and the Village Panchayat, Bordi, respectively, and may be competent to prefer an appeal under clause (f) of section 64. But such appeal can be preferred only against an order of the State Transport Authority granting a permit. As stated above the order of the Regional Transport Authority cancelling the permit against which an appeal had been preferred to the State Transport Authority was considered to be ineffective inasmuch as the requirement of the proviso to section 60(1) had not been followed. The reference back to the Regional Transport Authority for rehearing the matter does not accordingly mean the grant of a permit by the State Transport Authority. There is, therefore, no case for the parties concerned to make an appeal to the State Government at the moment. They will have to await the decision of the Regional Transport Authority. The view expressed by the Secretary, State Transport Authority that the appellants have no locus

standi under section 64 to prefer an appeal to Government at this stage appears to be correct.

2. Incidentally it appears that the statement made by the Appellants at "A" on page 2 ante that the State Transport Authority set aside the order of the Regional Transport Authority is not quite correct.

Sd/- J.R.Dhurandhar,
11/12.
Additional Secretary to Government.

U.R. to H.D. No. 2783, dated the 13th February1951.

4-Cs.

M.V.V.
27/6.

Office of the R.L.A.

The view expressed at 'A' in the Secretary, State Transport Authority's letter is correct.Rule 72(1) of the Bombay Motor Vehicles Rules, 1940, contemplates the issue of dueplicates of permits which are valid and still operative. If the permits have already expired, rule 72(1) m would not be available.

Sd/- J.R.Dhurandhar,
19.2,

Remembrancer of Legal Affairs.

U.R. to H.D. No.3147, dated the 20th February 1951.

4-Cs.

M.V.V.
27/6.

Legal Department.

It appears from the letter of the State Transport Officer at page 1 ante that the State Transport Authority has taken a decision that public carrier permits granted to private operators should specifically exclude the use of Kacha and Non-metalled roads. The object is that heavy goods vehicles should not be permitted to cause damage to such roads.The question raised for consideration is whether action can be taken either under sub-section (1) of section 43 or section 74 of the Motor Vehicles Act, 1939, to give effect to this decision.

2. Section 43 of the Motor Vehicles Act, 1939,empowers the State Government to control road transport.It is not clear which clause of that section the State Transport Officer has in mind when he suggests in paragraph 2 of his letter that the State Government might restrict or prohibit kacha roads being used by goods vehicles. Under clause (i) of sub-section(1) of that section the State Government has power to prohibit or restrict throughout the State or in any area or on any route within the State the conveying of long distance goods traffic generally, or of prescribed classes of goods, by private or public carriers. But such action can be taken having regard inter alia to the desirability of preventing the deterioration of the road system (vide clause (c)). The prohibition that can be imposed under sub-section (1) is obviously with a view to protecting all transport systems including road transport and railway transport This power cannot be used by the State Government with the narro view of protecting the condition of the roads.

3. The other alternative course suggested by the State Transport Officer is that the District Magistrate should restrict the operation of heavy goods vehicles on kacha roads by issuing a notification under section 74 of the Act. Under that section the State Government or any authority authorised in thi behalf by the State Government, if satisfied that it is in the interests of public safety or convenience or because of the nature of any road or bridge, can, by notification in the Official Gazette, prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification,

the driving of motor vehicles or of any specified class of motor vehicles or the use of tractors either generally in a specified area or on a specified road. This section does not appear to contemplate a total prohibition; (cf. para 4 of R.L.A's /0. No. 3410,Dt. 18/4/41). Moreover it does not appear that all the roads in the State of Bombay or in a District as a whole can be brought under the scope of the Notification that can be issued under that section. The use of all Kacha roads in a specified area can be prohibited. But it would not be feasible to prohibit the use of all Kacha roads throughout the State of Bombay or in a district (cf. the words "specified road" at end of the Sec.).

4. The proposed action cannot be taken either under section 43 or section 74 as suggested by the State Transport Officer.

Sd/- J.R.Dhurandhar,
16/2.

Additional Secretary to Government.

U.R. to H.D. No. 3047, dated the 17th February 1951.

4-Cs.

M.V.V.
28/6.

Legal Department.

Motor Vehicles Act, 1939. Section 44(2).

Under section 44(2) of the Motor Vehicles Act, the financial interest, whether as proprietor, employee or otherwise, in any transport under-~~taki~~-taking involves in initial disability for the appointment of a person as member of the Provincial Transport Authority or a Regional Transport Authority. Although the Corporation constituted under the Road Transport Corporations Act, 1950, is not in clear terms treated as a transport undertaking, still the words "in any other road transport undertaking" in section 6 of that Act clearly imply that the Corporation constituted under the Act is a road transport undertaking. When an employee of the State Transport Corporation suffers from the initial disability under section 44(2) of the Motor Vehicles Act for appointment as a member of the State Transport Authority or of a Regional Transport Authority, he cannot be appointed as such member even if he does not take any part in matters concerning the State Transport Corporation coming up before the State Transport Authority it would not cure his initial disability.

Sd/- J.R. Dhurandhar,
16/2.

Additional Secretary to Government.

U.R. to H.D. No. 3041, dated 17th February 1951.

4-Cs.

M.V.V.
28/6.

Legal Department.

The question raised for the consideration of the R.L.A. in this case is whether the State Transport Officer as the administrative head of the Motor Vehicles Department can issue directions to the licensing authorities in the exercise by such authorities of the power conferred by sub-section (1) of section 15 of the Motor Vehicles Act, 1939; and whether the State Transport Officer can review the orders passed by the licensing authorities under that provision.

2. Sub-section (1) of section 15 of the Motor Vehicles Act 1939, empowers the licensing authority, if it is satisfied that any person is a hibitual criminal or a habitual drunkard, etc., to make an order disqualifying that person for a specified period for holding or Obtaining a licence. Sub-section (3) gives an aggrieved party the right to appeal to the prescribed authority who is the Commissioner of Police in Bombay and the District Magistrate elsewhere (vide Rule 7(a) of the Bombay Motor Vehicles Rules,1940). It appears that the intention of the State Transport Officer as the administrative head of the Motor Vehicles Department is to issue directions as to how the provisions of section 15(1) should be interpreted by the licensing authorities and also to review their decisions under that provision of law. It will not be open to him to do so under the Act. It is true that the provisions of section 15(1) are restrictive in their scope and do not permit action by way of suspension of driving licences in cases where the motor vehicle is driven by the driver under the influence of drink, unless he is proved to be a habitual drunkard. The proper remedy is to widen by amendment the scope of section 15(1) so as to enable the licensing authorities to suspend licences even in such cases.

Sd/- P.H.Lad,
Additional Secretary to Government.

4-Cs./M.V.V./28.6 U.R. to H.D. No. 3854, dated the 8th March 1951.

Legal Department.

The question raised for consideration in this case is whether a person to whom a driving license has been issued under the provisions of Chapter II of the Motor Vehicles Act, 1939, can drive a vehicle during the period of grace referred to in sub-section (3) of section 11 of the Act and whether a license if applied for renewal within the period of grace is required to be renewed retrospectively.

2. The answer to the questions raised appears to be in the negative. Section 10 of the Motor Vehicles Act, 1939, provides that a driving license issued under Chapter II shall be effective without renewal for a period of twelve months only from the date of issue or last renewal. Section 11 provides for the renewal of licenses. Sub-section (3) of that section provides that the fee payable for the renewal of a license shall be three rupees, if the application for renewal is made previous to, or not more than 15 days subseqent to, the date on which the license is due to expire and shall be five rupees in any other case. This provision by itself does not mean that a licensee has leave to drive a vehicle even within the period of 15 days referred to. As observed by Beaumont C.J. in Emp. vs. Ramdas Nathubhai Shah, 44 Bom. L.R. 449 at page 451, sub-section (3) of section 11 "has nothing whatever to do with the effectiveness of the licence. It merely enables a licensee to obtain his license at a lower rate, if he applies within 15 days of the expiration of his old license". The question raised appears to be covered by the above ruling. As regards renewal of licenses with retrospective effect, it is clear that it is not incumbent upon the licensing authority to renew them retrospectively though applied for within the period of grace. The view expressed in para. 3 of the H.D. office note is correct. In order however to avoid hardship, it would be advisable for the licensing authorities to advise the licensees to apply for renewal in good time before the date of the expirty tmx of the license, so that renewal could be

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issued by the licensing authorities beefore such date.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R to H.D. No. 4089, dated he 12th March 1951.

4-Cs.

M.V.V.
28/6.

Legal Department.

The question raised for consideration is whether the appeal preferred to Government by Shri G.U.Tasgaonkar against the decision of the Appellate Committee of the State Transport Authority dated 27th December 1950 is time barred.

2. Shri Tasgaonkar had first applied to the Regional Transport Authority, Karnatak Region, for the grant of a stage carriage permit on the Hubli-Hebsur route. As the permit was refused he appealed to the State Transport Authority. The Chairman of the Appellate Committee of the State Transport Authority rejected his appeal on 27th December 1950. The decision of the Appellate Committee was communicated to the Appellant under the State Transport Authority's endorsement dated the 6th January 1951 by registered post which was received by Shri Tasgaonkar on 11th January 1951. The appeal preferred by him to Government against the Appellate Committee's order was received in the Home Department on 12th February 1951. The appeal in question falls under secion 64(a) of the Motor Vehicles Act, 1939, to which rule 75 of the Bombay Motor Vehicles Rules, 1940, applies. That rule requires an appeal to the State Government against the decision of the State Transport Authority to be made "within thirty days of the receipt of the order." In computing the period of 30 days the general principle embodied in section 9 of the General Clauses Act, 1897, will have to be followed (cf.R.L.A's Opinion No. 14224, dated 10th October 1950); and the day on which Shri Tasgaonkar received the order viz. 11th January 1951 will have to be excluded. The period of thirty days accordingly expired on 10th February 1951. Since his appeal was received on 12th February it is beyond time.

Sd/- P.H.Lad,
Additional Secretary to Government.

U.R. to H.D. No. 5149, dated the 31st March 1951.

4-Cs./M.V.V./2886.

Legal Department.

The question for the consideration of the R.L.A. is whether the mobile cranes of the Bombay Port Trust are motor vehicles within the meaning of the Motor Vehicles Act, 1939, and require to be registered under the provisions of Chapter III of the Act.

2. Sub-section(1) of section 22 of the Motor Vehicles Act, 1939, provides that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with Ch. III. Thus the prohibition under this subsection applies to motor vehicles if they are to be driven for the purpose of carrying passengers or goods. The definition of the expression "motor vehicle" in sec. 2(18) of the Act is "any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached or a trailer. In the first place it appears doubtful whether mobile cranes of the Bombay Port Trust will fall within the definition of "Motor Vehicle" in the Act. They cannot be deemed to be vehicles adapted for "use upon roads". Even if they are held to be "motor vehicles" within the meaning of the Act, it does not appear they would fall with-in the scope of section 22(1)for that subsection refers to motor vehicles driven in public or other places "for the purpose of carrying passengers or goods." In this view it does not appear it would be necessary to require the cranes to be registered before they are moved from the docks to other wharfs. The view expressed by the D.S.H.D. and the Secy. H.D. appears to be correct.

Sd/- P.M.Lad,

Additional Secretary to Gove nment.

U.R. to H.D. No. 4595, dated the 22nd March 1951.

4-Ca./M.V.V./28.6

Legal Department.

The question raised for consideration is whether the Appellate Committee of the State ~~x~~ Transport Authority can, in an appeal ~~xxxx~~ made under section 64 of the Motor Vehicles Act, 1939, sanction the grant of public carrier permits in excess of the number fixed by the Regional Transport Authority under section 56(a) of the Act.

2. Clause (a) of section 56 of the Motor Vehicles Act, 1939, empowers the R.T.A. to limit the number of transport vehicles or tranpport vehicles of any specified type for which public carriers' permits may be granted in the region or in any specified ~~xx~~ area or on any specified routes within the region. ~~When~~ When applications for such permits are made and the number of permits limited by the R.T.A. has been exhausted, the R.T.A. refuses to grant permits. The parties then prefer an appeal to the Appellate Committee of the S.T.A. under section 64(a) which provides a right of appeal to any person agrrieved by the refusal of a R.T.A. to grant a permit. Section 64 does not state what ~~kind~~ kind of order can be passed by the Appellate Committee of the S.T.A. in appeals comign before it. Presumably no such provision has been made as the Appellate Committee will have to ~~xx~~ pass an order with reference to the causes of action specified in clauses (a) to (g) of section 64. Thus if an appeal is made on the ground of refusal to grant a permit, the Appellate Committee would appear to be competent to direct the grant of a permit. In cases in which permits have been refused on the ground that the number limited by section 56 has been exhausted, it would therefore impliedly mean that the Appellate Committee can revise that number. In such cases the power of the R.T.A. under section 56 will have to be deemed to be subject to revision in appeals to the Appellate Committee. The Appellate Committee need not merely reject such appeals on the ground that the number of permits limited by the R.T.A. has been issued. If, therefore, in any case the Appellate Committee is satisfied

that the number of permits fixed by the R.T.A. under section 56(a) should be increased, there would be no objection to its accepting such appeals. This view is strengthened by the fact that under sub-section (4) of section 44 the P.T.A. has right to issue directions to any R.T.A. for the purpose of exercising and discharging powers and functions enumerated in sub-section (3). Clause (a) of sub-section (3) refers to co-ordination and regulation of the activities and policies of the R.T.A. s in the State. Restriction of the number of vehicles on a particular route or in a particular are can be held bo be a policy within the meaning of sub-section (3) . Where the numbers of vehicles have been so restricted, the proper and fairer course, however, for the P.T.A. would be, in cases in which they deem fit, to issue directions under sub-section (4) of section 44 raising the number of vehicles and then remanding the cases of appellants, who have been rejected on the ground of restricted numbers, to the R.T.A. for fresh consideration of their cases in the light of directions issued under sub-section (4) of section 44.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 5260, dated the 2nd April 1951.

4-Cs.
M.V.V.
28/6.

Legal Department.

The question for consideration in this case is whether a revision application can lie to Government against the order passed by the Appellate Committee of the State Transport Authority upholding the Regional Transport Authority's order disqualifying Mr.A,M. Stephano from holding an authorisation to drive public service vehicles for a period of fifty years.

2. The order of the Regional Transport Authority in this case was passed under sub-section (1) of section 16 of the Motor Vehicles Act, 1939. Under sub-section (2) of that section a person aggrieved by such an order can make an appeal to the prescribed authority (i.e. the Appellate Committee of the State Transport Authority) within a period of thirty days. No further appeal nor a revision is provided by the Act. Consequently, the view expressed by the Home Department that neither a second appeal nor a revision application can lie appears to be correct.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No, 6664, dated the 26th April 1951.

4-Cs.

M.V.V.
28/6.

Legal Department.

The Remembrancer of Legal Affairs is requested to advise on the question as to in whose names motor vehicles should be registered under the Motor Vehicles Act, 1939, when they are owned by other than individuals (e.g. unregistered companies, firms,etc.). Attention of the Home Department is invited to R.L.A's Opinion No.1113, dated the 24th January 1950 where a similar question has been considered and in which the view has been expressed that only individuals can be registered as registered owners.

Sd/- P.N.Lad,
Additional Secretary to Government.

U.R. to H.D. No. 7999, dated the 4th May 1951.

4-Cs.

M.V.V.
28/6.

Legal Department.

Rule 76(1A) provides for a second appeal to Government against an order made in appeal under section 64 by the Appellate Committee of the State Transport Authority. But this right is given only to the appellant before the Appellate Committee i.e. the person who being agrieved by the order of the Regional Transport Authority had preferred an appeal to the Appellate Committee. The Regional Transport Authority cannot, therefore, appeal against the decision of the Committee, however, rule 76-A provides for revisional powers of Government against any order passed by the Regional Transport Authority, the Committee of the State Transport Authority, or the State Transport Authority in respect of any of the matters dealt with under clauses (a),(b),(c),(d), (e) and (f) of section 64 of the Act. The Government can exercise these powers of its own motion or on having moved by any person. Consequently, it would be quite in order for the Regional Transport Authority to move Government to exercise their powers of revision under rule 76A. It is, however, for Government to consider whether it would be administratively proper for the Regional Transport Authority, which is the original administrative tribunal, to move Government for revising the orders passed in appeal from its orders by the Appellate Tribunal.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 7298, dated the 8th May 1951.

4-Cs.

M.V.V.
28/6.

Legal Department.

Motor Vehicles Act, 1939.

Monopoly fees during pre-merger days

recovery of.

Seen and returned.

Ordinarily there would not have been any objection to Government recovering the monopoly fees for the enjoyment of the monopoly during the pre-merger period. But in the present case it appears it would be difficult to assess the monopoly fees for the broken period of the monopoly. Consequently the recovery of the monopoly fees need not be pressed.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 4592, dated the 22nd March 1951.

4-Cs.

M.V.V.
28/6.

Legal Department.

R.I.No. 9321, dated 8/5/1951.

Submitted with reference to H.D. office note at pp. 15-16 ante. The question raised for consi - deration in this case is whether the State Road Transport Corporation is liable to pay the Regis - tration fees in respect of vehicles originally registered in the name of the Motor Transport Controller when the State Transport was a Government Department and subsequently transferred to the Corporation.

2. It seems that whereas the R.T.O. Bombay has demanded the registration fee due in respect of all such vehicles, the State Transport Officer, for the reasons mentioned in his note at pp. 11-12 ante, considers that no fee other than the transfer fee can be recovered from the Corporation. The registra- tion of motor vehicles is carried out under the provisions of Chapter III of the Motor Vehicles Act, 1939. Section 22 lays down the necessity of regis- tration of transport vehicles before such vehicles can be put on the road. Under sec. 23 registration is to be made in the State in which the owner resides or has his place of business. Section 24 lays down the procedure for registration. Sec. 26 provides for the production of the vehicle for inspection. Sec. 28 provides that the registration once made shall be valid throughout India. Sec. 30 provides for noting change of address in the certificate of registration. Section 31 deals with the effect of transfer of ownership. Under that section the transferee has to report the transfer to the registering authority within 30 days and has to forward the certificate of registration along with the prescribed fee for the particulars of the trans- fer of ownership being entered therein. Section 39 provides special machinery for the registration of

P.T.O.

certain types of vehicles belonging to the Central Government. These are the relevant provisions about registration in Chapter III. There is nothing in that Chapter to suggest that on transfer of ownership fresh registration shall be made. On the contrary sec. 31 provides only for the payment of transfer fee when the ownership is transferred. The fact that when the vehicles in question were first registered no registration fee was recovered does not appear to affect the position. For these reasons the view expressed by the S.T.O. in the last para of his note at pp. 11-12 ante appears to be correct.

Sd/- D.W.D.
14.5.51.

D.S.(Civil)

4-Ca.

M.V.V.
28/6.

Legal Department.

The legal position as stated in para 4 of the H.D. note is correct.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 7764, dated the 16th May 1951.

4-Cs.
M.V.V.
28/6.

Legal Department.

The following questions have been raised by the Secretary, S.T.A., for the opinion of the R.L.A.-

(1) Whether in an appeal preferred to the Appellate Committee of the State Transport Authority under section 64 of the Motor Vehicles Act, 1939, the representative of the R.T.A. can and should be compelled to appear before the Committee.

(2) Whether a copy of the ~~x~~ report submitted by the Secretary, R.T.A., on the memornadum of appeal should be furnished to the appellant.

(3) Whether there can be any other respondent in an appeal except the R.T.A.

(4) Whether parties other than the appellant and the R.T.A. have a right to be heard by the Appellate Committee and whether they should be heard.

Question No.1 .- A person aggrieved by any of the orders referred to in section 64 of the Motor Vehicles Act, 1939, has been given the right of appeal to the Appellate Committee. That section further provides that in deciding the appeal, the Appellate Committee shall give "such person" i.e. the appellant and the "original authority" i.e. the R.T.A. an apportunity of being heard. Rule 77 of the Bombay Motor Vehicles Rules, 1940, which prescribes the procedure on appeal is as follows:-

"Appeals - procedure on.- After the appellate authority has appointed a time and place for the hearing of the ~~xx~~appeal it shall give an intimation to the authority against whose order the appeal is made and the appellant who shall, within fourteen days of the receipt of intimation forward to the appellate authority, a list of documents upon which they propose to rely, together with copies of such documents in duplicate, and may, upon the appointed date and at subsequent hearing, appear either in person or through an agent or a representative authorised in writing in this behalf."

It will thus be seen that the Appellate Authority is bound to give an opportunity both to the appellant and the R.T.A. of being heard before deciding the appeal. For that purpose rule 77 provides for intimation of the time and place for the hearing of the appeal being given to the appellant and the R.T.A. and also fourteen days' time being given to them to forward to the Appellate Authority a list of documents upon which they propose to rely. Both the appellant as well as the R.T.A. have the right to appear at the hearing either in

 person.....

or through an agent or a representative authorised in writing in this behalf. The R.T.A. , if it so chooses, may not even appear at all in which case the appeal will be heard by the Appellate Authority ex parte. It, therefore, follows that the R.T.A. cannot be compelled to appear at the hearing of the appeal. Nor is there any provision of law by virtue of which the Appellate Authority can so compel the R.T.A. to appear. It is, however, administratively desirable that appearance should be made on behalf of the R.T.A. so th its case should not go by default at the hearing of the appeal by the Appellate Authority.

Question No.2.- There is no warrant either in the Act or in the Rules for the practice which appears to have been adopted by the Appellate Authority to call for the remarks of the R.T.A.on the points raised in the memo. of appeal. That practice can perhaps be justified on the grounds of convenience. But if there is such a report called for from the R.T.A. , it will have to be disclosed to the appellant a other parties, if any, to the appeal. For under the law the only right which the R.T.A. has is to appear at the hearing and urge what it has to say in support of its order in the presence of the appellant. Non-disclosure of the report which will naturally influence the decision of the Appellate Tribu nal would amount to denial of the right of the appellant to know on what grounds the order is sought to be supported by the R.T.A. The fact that such a report contains confidential matter will not affect the legal position in this regard.The obvious remedy is either to dispense with such a report or that confidential matter the disclosure of which may be undesirable should not find place in the report.

Question Nos.3 and 4.- The appellant and the R.T.A. are necessary parties to an appeal,but that will not preclud the Appellate Authority, in the interest of justice, either hearing any other persons or adding them as parties. For

 example.....

example this will be specially necessary where there are contending claimants and permits have been granted only to one or some of them. In appeals against such orders by the disappointed claimants, if the Appellate Authority has to set aside the order of the R.T.A. , it must in fairness hear, or join as respondents, the persons to whom permits have been given by the R.T.A.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D, No. 7861, dated the 18th May 1951.

A-Ca.

M.V.V.
28/6.

Office of the R.L.A.

The State Transport Authority proposes that the Regional Transport Authorities should, under section 56 of the Motor Vehicles Act, 1939, attach to private and public carrier permits a condition that the vehicles shall be used only on metalled roads. The R.L.A. is requested to advise whether this course would be legally feasible.

2. It appears that it will be feasible to give effect in part to the proposal of the State Transport Authority only so far as public carrier permits are concerned but not in respect of private carrier permits. In deciding whether to grant or refuse a public carrier's permit the Regional Transport Authorities can, under section 55 (f) of the Motor Vehicles Act,1939, take into consideration the condition of the roads included in the proposed routes or areas. Under clause (b)(i) of section 56 the Regional Transport Authority can, after considering the above matter, attach to such a permit a condition that the vehicle shall be used only on specified routes or in a specified area. Thus it will be feasible to specify in such permits routes consisting of metalled roads (e,g, the Bombay Poona Road). It will not, however be correct to attach a condition that the vehicle shall not be used on non-metaled or Katcha roads.

3. As regards private carrier's permits attention is invited to section 53 (1) of the Act, That sub-section also empowers the Regional Transport Authority to take into consideration the condition of the roads to be used by private carriers in deciding whether or not to grant a private carrier's permit. Sub-section (2) empowers the Regional Transport Authority to impose conditions in such permits in regard to the goods that may be carried, the areas and the maximum weight and axle weight etc.(see also the form (p.Pr.C) of application for such permit

 prescribed.....

prescribed under rule 53(1) ~~xx~~(v) of the Bombay Motor Vehicles Rules, 1940. There is no provision as in section 56(b)(1) to attach a condition specifying routes. The proposal cannot, therefore, be given effect to in the case of private carrier permits.

Sd/- J.R.Dhuraandhar,
30.8

Remembrancer of Legal Affairs.

U.R. to H.D. No. 8489, dated the 30th May 1951.

4-Cs.

H.V.V.
28/6.

Legal Department.

The attention of Home Department is invited to R,L.A's Opinion No.1113 dated 24th January 1950 and No.7099 dated 4th May 1951 (page 9 ante). It is clear from these opinions that only an individual can be registered as a registered owner of a motor vehicle under the Motor Vehicles Act, 1939. The Deputy Secretary, Home Department, has now raised the question in whose names motor vehicles owned by registered companies and co-operative societies should be registered. A company registered under the Companies Act is a body corporate; so also a Co-operative Society. These may be legal entities created by law, but for the purposes of registration none except individuals can be recognized. Amendment of the Act will be necessary if registration is to be allowed in names other than those of individuals.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 8140, dated the 23rd May 1951.

4-Cs.

M.V.V.
28/6.

Submitted.

The question for consideration is whether the prohibition imposed by sub-rule(9) of rule 43 of the Bombay Motor Vehicles Rules, 1940, will apply in the case of a motor vehicle(Chevrolet bus) put on the road for purposes of test and carrying bags of sand to simulate actual conditions of operation. The S.T.O. states that the rule would not be attracted.

Sd/-

4-Cs.

M.V.V.
3/7.

Legal Department.

The view expressed by the State Transport Officer in paragraph 2 of his letter at page 1 ante is correct.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 8529, dated the 31st May 1951.

4-Cs.

M.V.V.
3/7.

Office of the R.L.A.

The State Transport Authority proposes to issue a policy directive to the various Regional Transport Authorities to the effect that (1) new permits issued to the Bombay State Road Transport Corporation should be area permits and not route permits and (2) the Corporation should be allowed to convert the existing route permits into area permits. The R.L.A. is requested to advise whether it would be legally feasible for the State Transport Authority to issue such a policy directive to the Regional Transport Authorities.

2. Sub-section (1) of section 42 of the Motor Vehicles Act, 1939, makes the taking out of a permit from the Regional Transport Authority incumbent for the use of a vehicle (which will include also a stage carriage vehicle) in any public place. Section 46 provides what particulars an application for a stage carriage permit shall contain. As will be seen from clause (b) of that section, the applicant among other particulars has to specify "the route or routes on which or the area within which it is intended to use the vehicle." It is therefore obvious that a permit issued for the use of a vehicle as a stage carriage permit need not be confined to a particular route or routes and can be for a specified area. Nor is it obligatory for the R.T.A. in granting a permit, to attach a condition regulating the timings of arrival and departure of the stage carriage. For, section 48 of the Act which empowers the R.T.A. to impose any of the conditions set out in that section (including the condition with regard to timings of arrival and departure) is discretionary and not mandatory. The word used in that section is "may" and not "shall". It is, therefore, open to the R.T.A. not to attach the condition regarding timings to a stage carriage permit. The issue of stage carriage permits for specified areas, whether with or without the condition regarding timings, would not therefore be inconsistent with the scheme of the Act.

.. Also, where permits have already been issued for particular routes, they can on application under Rule 73 of the Bombay Motor Vehicles Rules, 1940 be modified or converted by the R.T.A. at its discretion into area permits.

3. Sub-section (3) of section 44 which lays down the powers and functions of the State Transport Authority provides inter alia for the power of the State Transport Authority to co-ordinate and regulate the activities and policies of the R.T.As. Sub-section (4) further provides that for the purpose of exercising and discharging the powers and functions specified in sub-section (3) the State Transport Authority may issue directions to any Regional Transport Authority and the Regional Transport Authority shall be guided by such directions. However, these powers under sub-sections (3) & (4) of section 44 cannot be exercised by the State Transport Authority in a manner so as to take away the statutory powers and discretion of the Regional Transport Authorities under the Act and the Rules made thereunder. The policy directive proposed to be issued by the State Transport Authority in terms takes away the discretion of the Regional Transport Authority under sections 47 and 48 and Rule 73 so far as the stage carriage permits of the State Road Transport Corporation are concerned. The issue of the proposed draft directive will, therefore, not be permissible under the Act. There would however appear to be no objection ot recommend to the Regional Transport Authorities for their consideration and adoption the policy of issuing area permits and converting existing route permits into area permits in the case of transport organizations operating in a compact area and not merely in the case of one such transport organization, namely the State Road Transport Corporation.

Sd/- J.R.DHURANDHAR,
2/6.

Remembrancer of Legal Affairs.

U.R. to H.D. No., 524-Confl., dated the 4th June 1951.

4-Cs/M.V.V./28.6

LEGAL DEPARTMENT.

The H.D. in para. 4 of their office note have stated that though under section 5 of the Motor Vehicles Act, 1939, an owner or person in charge of a motor vehicle is forbidden from causing or permitting any person not satisfying the provisions of section 3 or 4 (i.e. not in possession of an effective driving licence) to drive a vehicle, there is no provision in the Act for taking action against such owner or person. This view is not correct. Such owner of person is liable to punishment under section 112. That section makes a general provision prescribing the penalty of fine for contravention of the provisions of the Act in cases in which no other penalty is specifically provided for. The proposal made by the Secretary, State Transport Authority, however, is that the permit of such an owner or person should be made liable to cancellation. There is no specific provision in the Act authorizing this. If it is intended to give effect to this proposal a suitable amendment of the Motor Vehicles Act, 1939, would be necessary.

Sd/- P.H.Lad,
Additional Secretary to Government.

U.R. to H.D. No. 8741, dated the 4th June 1951.

4-Cs.

M.V.V.
29/6.

Office of the R.L.A.

The Secretary, State Transport Authority, requests Government to issue an order under sub-section (3) of section 58 of the Motor Vehicles Act, 1939, restricting the period of the permits to be granted to private operators from six months to one year. The object underlying the proposal is to facilitate the Bombay State Road Transport Corporation taking over fresh routes. The question for the consideration of the R.L.A. is whether it would be legally feasible to issue a direction as proposed.

2. Sub-section (3) of section 58 of the Motor Vehicles Act, 1939, provides that notwithstanding anything contained in sub-section (1), the State Government may order a Regional Transport Authority or the State Transport Authority to limit the period for which any permit or class of permits is issued to any period less than the minimum prescribed in the Act. Under this provision the State Government can issue a direction limiting the period of either all permits issued by the Regional Transport Authority or the State Transport Authority in genreal or of any class of permits, for example stage carriage permits. Such a direction will however apply to permits issued to all operators including the State Transport Corporation. It would not, therefore, be legally feasible for the State Government to direct under sub-section (3) of section 58 that stage carriage permits issued in favour of operators other than the State Transport Corporation should be for a period less than the minimum prescribed by the Act. The practical difficulty which may arise can, however, be overcome by Government withdrawing the directions when the State Transport Corporation proposes to take over the routes.

Sd/- J.R.Dhurandhar,
8/7.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 661-Confl. Dated the 9th July 1951.

4-Cs.

M.V.V.
29/6.

OFFICE OF THE R.L.A.

The question raised by the Secretary, H.D. for the consideration of the R.L.A. is whether the Regional Transport Officer in his capacity as Licensing Authority under rule 3 of the Bombay Motor Vehicles Rules, 1940, Government.

2. Under rule 3 of the Bombay Motor Vehicles Rules, 1940 the Regional Transport Officer, Baroda, is the licensing authority for the district. The licensing authority in the present case appears to have acted under rule 20 of the Rules. Sub-rule (1) of that rule provides that no person shall engage in the business of giving instructions for hire or reward in the driving of motor vehicles, nor shall any person advertise or otherwise publicly undertake to give such instruction, without the approval of the licensing authority of the area in which he has his place of business granted in Form MS andsee constitutiong the said person as a school of motoring. Sub-rule(7) prescribes the various conditions with respect to which the licensing authority must be satisfied before approval is granted to the establishment of a school of motoring or to its continuance. Sub-rule (5) empowers the licensing authority to withdraw at any time his approval for reasons to be intimated in writing. There is no provision in the Motor Vehicles Act, 1939, or the Rules that while so acting the Regional Transport Officer shall exercise his powers subject to the supervision of Government. It is therefore not correct that the Regional Transport Officer exercises// his power as Licensing Authority subject to the orders of Government.

Sd/- J.R.Dhurandhar,
20/7.

Remembrancer of Legal Affairs.

U,R. to H.D. No. 11542, dated the 21st July 1951.

4-Cs.

M.V.V.
29/5.

Legal Department.

R.I.No. 14586, dt. 13.7.1951.

Submitted with reference to Secretary, H.D.'s note at pp. 2-3 ante. The Secretary, Regional Transport Authority, Ahmedabad, in ~~x~~ inviting applications for the grant of a particular contract carriage permit (i.e. a taxi cab permit) in the Mehsana district has advertised a condition inter alia that the applicant must be a bona fide resident of Radhanpur proper. The Secretary, H.D. considers that this condition is illegal. The R.L.A. is requested to advise.

4- Cs.

M.V.V.
29/6.

Office of the R.L.A.

The view taken by the Secretary, Home Department, is correct. Condition (1) which requires the applicant to be a bona fide resident of Radhanpur proer would be ultra vires of Article 15(1) and Article 19(1)(g) of the Constitution.

Sd/- J.R.Dhurandhar,
17/7.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 11395, dated the 18th July 1951.

4-Cs.

M.V.V.
29/6.

Legal Department.

The question raised for the consideration of the R.L.A. is whether under section 45 of the Motor Vehicles Act, 1939, it is open to a person residing in one region to apply for the grant of a permit to the Regional Transport Authority of another region within which it is proposed to use the vehicle.

2. Section 45 of the Motor Vehicles Act, 1939, provides that every application for a permit shall be made to the Regional Transport Authority of the region of of one of the regions in which it is proposed to use the Vehicle and if the applicant resides or has his principal place of business in any one of the regions, to the Regional Transport Authority of that region. Applications for permits can thus be made (1) to the Regional Transport Authority of the region where it is proposed to use the Vehicle, or (2) if it is proposed to use the vehicle in two or more regions to the Regional Transport Authority of any one of such regions. The only restriction in the case of the latter class is that if the applicant resides or has his principal place of business in one of the regions, he must apply to the Regional Transport Authority of the region where he resides or has his principal place of business. This being the only restriction on the making of applications.— there is no objection to a person residing in one region applying for a permit to the Regional Transport Authority of another region in which it is proposed to run the vehicle. In this connection the attention of the Home Department is invited to R.L.A's u.r. No.4136, dated 28th April 1948, where a similar view expressed by the Home Department was approved.

Sd/- P.N.Lad,

Additional Secretary to Government.

U.R. to H.D.No. 8608, dated the 1st June 1951.

4-Cs.

M.V.V.
29/6.

Office of the R.L.A.

Sub-rule (3) of rule 60 of the Bombay Motor Vehicles Rules, 1940, empowers the Regional Transport Authority to specify in any permit the goods which shall not be carried in a stage carriage or a contract carriage or the conditions subject to which certian classes of goods may be so carried. This rule appears to be relatable to clause (m) of sub-section (2) of section 68 of the Motor Vehicles Act, 1939, which empowers the State Government to make rules prescribing the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers. The proposal of the State Transport Authority amounts to providing an exception in sub-rule (3) of rule 60 in favour of permits issued to State Transport buses. The Motor Vehicles, Act, 1939, under which the rules are made does not sanction discrimination in favour of the stage coaches belonging to the State Transport Corporation, and the rule as proposed would not be legal.

Sd/- J.R.Dhurandhar,
13.6

Remembrancer of Legal Affairs.

U.R.to H.D. No. 9361, dated the 14th June 1951.

4-Cs.

M.V.V.
29/6.

Office of the R.L.A.

Sub-section (3) of section 44 of the Motor Vehicles Act, 1939, which lays down the powers and functions of the Transport Authority provides inter alia for the power of the State Transport Authority to co-ordinate and regulate the activities and policies of the R.T.As. Sub-section (4) further provides that for the purpose of exercising and discharging the powers and functions specified in sub-section (3) the State Transport Authority may issue directions to any Regional Transport Authority and the Regional Transport Authority shall be guided by such directions. It appears that the State Transport Authority has issued a policy directive to the Regional Transport Authorities that in view of the nationalisation scheme, stage carriage permits should not be granted to new comers when existing or displaced operators are available. Some of the Regional Transport Authorities have demurred to this policy directive and are not willing to act according to it on the ground that in the matter of grant of permits and choice of operators, they, as persons on the spot and in touch with local conditions, should have full discretion. The State Transport Authority has, therefore, approached Government with a request to issue suitable instructions to the Chairman of the Regional Transport Authorities for the due observance of the policy directive issued by the State Transport Authority. The Secretary, Home Department, has raised the question whether issue of such instructions by the Government is not liable to be challenged in a court of law and has sought advice of the R.L.A.

2. Under sub-section (1) of section 47 of the Motor Vehicles Act, 1939, a Regional Transport Authority has discretion to grant or refuse a stage carriage permit; only in granting or refusing a permit,

it is required to take into consideration the matters enumerated in clauses (a) to (f) of that sub-section. The policy directive in question directing the Regional Transport Authorities not to grant stage carriage permits to new comers when existing or displaced operators are available restricts the discretion of the Regional Transport Authorities under section 47(1) of the Act. As already pointed out in R.L.A.'s opinion No. 524-Confl. dated 4.6.1951, the powers under sub-sections (3) and (4) of section 44 cannot be exercised by the State Transport/ Transport Authority in a manner so as to restrict the statutory powers and discretion of the Regional Transport Authorities under the Act or the Rules made thereunder. As the policy directive in question which restricts the discretion of Regional Transport Authorities is itself not permissible, it will not be proper for Government to issue instructions to the Regional Transport Authorities directing their compliance with it. Even if a policy directive was one which did not interfere with the statutory powers or discretion of the Regional Transport Authorities, there-is no provision under the Act under which the State Government can issue instructions to the Regional Transport Authorities to comply with it. In view of the decision of the Allahabad High Court in Moti Lal vs. U.P.Government (A.I.R.(Allahabad) 1951, page 257), the proposed instructions would be illegal. It is true that the Constitution (Amendment) Act, 1951 has permitted nationalization. But the Motor Vehicles Act, 1939, has not been so far amended for the purpose. The R.L.A., therefore, does not advise the issue of any instructions by Government.

Sd/- J.R.Dhurandhar,
21/6.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 582-Confl. dated the 21st June 1951.

4-Cs.

M.V.V/29.6

OFFICE OF THE R.L.A.

Order refusing grant of licence.

Motor Vehicles Act, 1939, Sec. 57(7).

The view taken by Secretary, H.D. is ~~xxxx~~ correct. Ordinarily it is considered desirable that the administrative tribunals should give ~~xxxxx~~ reasoned reasoned decisions in cases where such decisions affect the interests of the parties and ~~xxxxxx~~ especially so when the tribunals are so required by a statutory provision. Consequently the order passed by the Regional Transport Authority in the present case without specifying the reasons for the refusal of the permit as provided in section 57(7) of the Motor ~~Xxxxxxxx~~ Vehicles Act, 1939 would be invalid.

Sd/- J.R.Dhurandhar,
26/7.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 11922, dated the 26th July 1951.

4-Cs.

M.V.V.
29/6.

Legal Department.

The view taken by Home Department is correct.

To operate a transport vehicle requires registration under section 22(1) and a permit undersection 42 (1) of the Motor Vehicles Act, 1939; but under section 38(1) a transport vehicle shall not be deemed to be validly registered for purposes of section 22 unless it carries a certificate of fitness in Form H in the first schedule. No such certificate of fitness appears nece - ssary for temporary registration of a vehicle under section 25(1) as such registration is temporary for a particular purpose and not for the purpose of using it as a transport vehicle. Consequently, no temporary permit can be granted under section 62 to vehicles temporarily registered under section 25(1).

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to H.D. No. 12281, dated 31st July 1951.

4-Cs.

M.V.V.
29/6.

Office of the R.L.A.

The State Transport Officer in his letter at pages 1-3 ante has made a presumption that a motor vehicle whose use is changed and consequently its class as well requires to be registered afresh. As there is no specific provision in the Motor Vehicles Act, 1939, prescribing how such re-registration shall take place he suggests an amendment of the Act as well as of the Rules. The R.L.A. is requested to advise whether the presumption made by the State Transport Officer is correct and whether it is expedient to amend the Act and the Rules.

2. Sub-Section (1) of section 22 of the Motor Vehicles Act, 1939, provides that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with Chapter III, Sub-section (1) of section 23 requires owners of vehicles to cause them to be registered by a registering authority in the State in which he has the residence or place of business where the vehicle is normally kept. Sub-section (1) of section 24 provides that an application by or on behalf of the owner of a motor vehicle for registration shall be in Form E in the First Schedule to the Act. A certificate of registration in Form G is then issued (sub-section 2). Section 28 provides that registration once made shall be effective throughout all the States. Sections 36 and 37 provide for special requirement for registration for transport vehicles. These are the relevant provisions in Chapter III pertaining to registration. A perusal of Form E (i.e. form of application for registration) shows that the applicant has to specify the class of vehicle and the particulars of previous registration and registered number, if any (vide items 2 and 13). Items 14 to 16 in that form contain additional particulars to be supplied in the case of transport vehicles other than motor cabs. It is true that.

that there is no specific provision in the Motor Vehicles Act requiring owners of motor vehicles to register them afresh when they change their use e.g. a taxi cab converted into a private car and vice versa. It is stated by the State Tranpport Officer that when a vehicle is transferred from one class to another it is incapacitated for use in the former class. The form of application also requires that additional particulars have to be supplied in the case of transport vehicles. But there is nothing in the Act which provides that registration once made does not subsist after a change has been made in the use of a vehicle. An amendment of of the Act will be necessary for the purpose.

Sd/- J.R.Dhurandhar,
6/8.

Remembrancer of Legal Affairs.

U.R. to H.D. ~~in~~ No. 12686, dated the 7th August 1951.

4-Cs.

M.V.V.
29/6.

LEGAL DEPARTMENT.

Under section 43(1)(ii) of the Motor Vehicles Act, 1939, the State Government has the power "to fix maximum or minimum fares or freights for stage carriages and public carriers to be applicable throughout the Province or within any area or any route within the Province". It is open to Government under this provision to fix different maximum or minimum fares or freights for different types of stage carriage or different types of public carriers. Government can also, under this provision fix different maximum or minimum rates of freight chargeable by stage carriages from those chargeable by public carriers. However, such different rates must apply equally to all operators of such vehicles. Government cannot discriminate in the matter of rates between one operator and another. In other words, the rates must be fixed with reference to the type of vehicles and not with reference to the persons operating such vehicles. It may be mentioned that it will even be open to Government, if it so thinks fit, to fix different maximum or minimum fares or freights chargeable by the same type of vehicle in different areas.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 9166, dated the 11th June 1951.

4-Cs.

M.V.V.
29/6.

Legal Department.

The question raised by the Home Department, viz., whether the goods vehicles used by the Railways for carriage of parcels are in type different from other types of vehicles is a question of fact, which must be decided by the Administrative Department concerned on the advice of its experts. The Legal Department cannot give any useful advice on that point.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 14134 dated the 4th September 1951.

4-Cs.

M.V.V.
29/6.

Legal Department.

In his opinion No.12281, dated the 31st July 1951(p.27 ante) the Additional Secretary had expressed the view that as no certificate of fitness was required by a Vehicle temporarily registered, it would not be feasible to grant to it temporary permit under section 62 of the Motor Vehicles Act, 1939. With regard to this view the State Transport Officer in his letter at p.33 ante observes that though a certifcate of fitness is not necessary for temporary registration of a vehicle under section 25(1), there is no implicit prohibition against the owner of such a vehicle obtaining such a certificate. From this the State Transport Officer draws a presumption that if a motor vehicle temporarily registered under section 25(1) also carries a certificate of fitness it can be deemed to be validly registered for purposes of section 22 and can then be granted temporary permit under section 62. The question for consideration is whether the presumption made by the State Transport Officer is correct.

2. It appears that there is some force in the presumption made by the State Transport Officer. The words "registered in accordance with this Chapter" (i.e. Ch. III) in sub-section (1) of section 22 of the Motor Vehicles Act, 1939, would include temporary registration under sub-section (1) of section 25. If, therefore, a transport vehicle temporarily registered under sub-section (1) of section 25 carries a certificate of fitness in Form H in the First Schedule to the Act as required by sub-section (1) of section 38 there would not appear any objection to issuing a temporary permit in respect of such a vehicle under section 62. However the practice of granting temporary permits for reasons oth r than those specified in section 62 is clearly irregular (A.L.R. 1951 All. 257). A temporary permit to facilit the carriage of useful loads in the vehicle would therefore hardly appear to be regular under section 62.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 14242, dated the 6th September 1951.

4-Cs.

M.V.V./29.6

Legal Department.

EX By G.N.,H.D.No.8100/5-I dated 1st August 1949, issued under section 44(1) of the Motor Vehicles Act, 1939, the State Government had notified the areas in the State in which the various Regional Transport Authorities should exercise their powers. By the said notification the following routes are included within the jurisdiction of the Regional Transport Authority, Poona :-

(1) The Mahad - Bhor - Jejuri Road in Kolaba District,

(2) The Chiplun-Karad Road in Ratnagiri District, and

(3) The Poona-Ahmednagar and Poona-Sangamner Roads in Ahmednagar District.

The question raised by the Regional Transport Authority, Poona, for consideration is whether goods vehicles covered by a public carrier's permit granted by that Authority for these routes can enter the Municipal limits of the towns of Mahad, Chiplun, Sangamner and Ahmednagar without the necessary countersignature from the Regional Transport Authority in whose jurisdiction the towns lie.

2. Sub-section (1) of section 63 of the Motor Vehicles Act, 1939, provides that except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region. The question in the present case, therefore, reduces to whether under G.N.,H.D.No.8100/5-I dated 1.8.1949 the towns of Mahad, Chiplun, Sangamner and Ahmednagar fall within the jurisdiction of an authority other than the Regional Transport Authority, Poona. It would be seen from that Notification that the jurisdiction of the Regional Transport Authority, Thana, extends to the whole of the Kolaba District excluding the Mahad-Bhor-Jejuri Road and the Ratnagiri District excluding the Chiplun-Karad Road; similarly the jurisdiction of the Regional Transport Authority, Nasik extends inter ali

to the Ahmednagar District excluding the Poona-Ahmednagar and Poona-Sangamner Roads. It appears therefore that whereas those xmdx roads in question come within the territorial extent of the Regional Transport Authority, Poona, the towns of Mahad, Chiplun, Sangamner and Ahmednagar do not fall under the jurisdiction of that authority. The permit granted by that Authority would not therefore be valid for the entry of the vehicles in the said towns unless countersigned. The x view expressed by the Secretary, State Transport Authority, in this respect appears to be correct.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 14594, dated the 14th September 1951.

4-Cs.

M.V.V.
29/6.

Legal Department.

It appears that the Regional Transport Authority decided not to consider Sardar Hazarsingh's applica - tion for a taxi permit for a period of two years in view of his past record. This virtually amounted to a refusal of the grant of a permit and an intima- tion that the application will be considered again after a period of two years. The appeal, therefore, made to the Appellate Committee of the State Transport Authority falls under ~~xxxx~~ clause (a) of section 64 of the Motor Vehicle Act, 1939. The Appellate Committee reduced this period to six months. In other words, it confirmed the refusal of the taxi permit but directed that the application should be considered again by the Regional Transport Authority, after six months. Rule 75 of the Motor Vehicles Rules 1940 provides for an appeal to the State Government. The appeal made by Sardar Hazarsingh against the order of the Appellate Committee falls under that rule. The argument now advanced by the appellant that the appeal was not entertainable by the State Government is not correct. There is no specific provision either in the Act or in the Rules as to what orders can be passed by the State Government in appeals made to it. The usual rule is that the Appellate ~~xxxx~~ Authority has the power to confirm, modify, or set aside the order appealed from, but no power to enhance a penalty imposed by the subordinate authority. Enhancement of penalties can only be done in exercise of revisions powers specifically making a provision for such enhancement. In this connection attention is also invited to R.L.A.'s Opinion No. 2971, dated the 2nd March 1950. The order passed by the State Government in this case amounted to (1) confirmation of the

refusal.....

refusal to grant a permit and (2) permanent disqualification of the applicant from consideration for the grant of a taxi permit. This enhancement of the period of disqualification cannot, therefore, be justified by the State Government in exercise of its appellate powers.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 8076, dated the 22nd May 1951.

4-Cs.

M.V.V.
29.6

Legal Department.

Statement of the Case.

One Sardar Hazarsingh Santsingh had applied to the Regional Transport Authority for the grant of a taxi permit but due to his bad record that authority decided not to consider his application for a period of 2 years from 8th June 1950. In appeal before the Appellate Committee of the State Transport Authority this period was reduced to 6 months. He therefore appealed to Government which decided that he should be permanently disqualified for the grant of a taxi permit (p.17 ante). In his present petition (pp.25-26 ante) Hazarasingh contends that the appeal on which the Government passed the above orders was not entertainably by Government which had also no power of revision; and the decision of Government is without jurisdiction .

2. It appears that the Regional Transport Authority decided not to consider Sardar Hazarasingh's application for a taxi permit for a period of two years in view of his past record. This virtually amounted to a refusal of the grant of a permit, and an intimation that the application will be considered again after a period of two years. The appeal, therefore, made to the Appellate Committee of the State Transport Authority falls under clause (a) of section 64 of the Motor Vehicles Act, 1939. The Appellate Committee reduced this period to six months. In other words, it confirmed the refusal of the taxi permit but directed that the application should be considered again by the Regional Transport Authority after six months. Rule 76 of the Bombay Motor Vehicles Rules, 1940, provides for a second appeal to the State Government. The appeal made by Sardar Hazarsingh against the order of the Appellate Committee will fall under that rule. The argument now advanced by the appellant that the appeal was not entertainable by the State Government does not appear correct.

3. The important point for consideration, however, is whether in the appeal made to Government it was competent for Government to permanently disqualify the applicant from consideration for the grant of a taxi permit. There is no specific provision in either in the Motor Vehicles Act or in the Rules as to what orders can be passed by the State Government in appeals made to it.

Ordinarily the Appellate Authority has the power to confirm, modify, or set aside the order appealed from, but no power to enhance a penalty imposed by the subordinate authority. Enhancement of penalties can only be done in exercise of revisional powers specifically making a provision for such enhancement. In this connection attention is also invited to R.L.A's Opinion No. 2971, dated the 2nd March 1950 (copy enclosed). The order passed by the State Government in this case amounted to (1) confirmation of the refusal to grant a permit and (2) permanent disqualification of the applicant from consideration for the grant of a taxi permit. The question is whether this enhancement of the period of disqualification by the State Government in exercise of its appellate powers is justifiable or not. As the point raised is of some importance and there have been a few cases in which Government has enhanced the period of disqualification, the Advocate General is kindly requested to advise.

Sd/- B.D.Nirchandani.

Additional Secretary to Goverment.

U.R. to Advocate General No.9077, dated the 8th June 1951.

4-Cs.

M.V.V.
29/6.

U. R. to the Advocate General No.9077.

Dated 6th June 1951.

O P I N I O N.

Under the Indian Motor Vehicles Act appeals are provided under section 16, sub-section (2) and Section 64. Under Rule 7(b) of the Bombay Rules, an appeal lies to the Appellate Committee of the Provincial Transport Authority. The ~~x~~ appeals under Section 64 are governed by Rule 76 of the Bombay Rules. In Rule 8 powers of the Appellate Authority are confined to confirmation, variation and setting aside of an order appealed from. In Rule 76 there is no similar provision. The rule making power in Chapter II under — Section 21 provides solely for conduct and hearing of appeals and the fees to be paid in respect of appeals and the refund of fees.

I am of opinion that under Section 21 it is not open to the Government to ~~x~~ frame a rule providing for enhancement of penalty by the Appellate Tribunal. That can only be done by amending the Act of 1929. Such a view can further be supported by analogy of the provisions of the Criminal Procedure Code where specific provisions have been made for enhancement of ~~punishment~~ punishment. For enhancement of penalty specific notice and grounds have got to be given to

4-Cs. the.....

to the party and the rules do not contain such specific provisions. I am of opinion that enhancement of penalty in appeal under the exsitng Rules would be open to challenge.

Sd/- C.K.Daftary,

Legal Department.

A copy of the opinion of the Advocate General who was consulted in the matter is sent herewith.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to H.D. No. 14602, dated 14.9.1951.

4-Cs.

M.V.V.
29/6.

Office of the R.L.A.

As R.L.A. advised in his opinion No. 7159 dated the 13th August 1941 that it is not feasible to make a rule under section 91 of the Motor Vehicles Act, 1939 providing for recovery of damages for injury done to Government property by motor accidents, P.W.D. is contemplating to propose an amendment to the Act. In the meanwhile the R.L.A. is requested to advise whether damage caused to parapets, road, road signs, furlong/mile stones etc. which are the property of Government by vehicles involved in accidents or otherwise, can be recovered by a civil suit to be filed by Government .

2. There does not appear to be any provision attaching any special liability - civil or criminal - in this respect or providing any summary procedure for recovery of damages. Under the English Law it is an offence wilfully to destercy or injure the surface of a highray, or wilfully to destroy or a obliterate milestones or direction posts etc. A person committing any such offence may, on conviction, be ordered to pay a fine not exceeding 40 S. over and above the damages occasioned by his act. (pl. see Halisbury's Vol. 16 pp.375-377 and Gully v. Smith 12 Q.B.D. 121 and Walkar V. Horner 1 Q.B.D. 4). There would be no objection to make a provision in the Act causing wilfully or negligently damage to the road etc. an offence and also providing for recovery of damages on conviction.

Sd/- J.R.Dhurandhar,
6/9.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 14424 , dated the 11th September 1951.

4-Cs.

M.V.V.
29/6.

Legal Department.

The State Transport Authority has issued a direction to the Regional Transport Authorities that a condition should be attached to public carriers' permits that the vehicles shall be used only on metalled roads under the provisions of section 56 (b)(i) of the Motor Vehicles Act, 1939. It appears that the grant of public carriers' permits has been sanctioned by the Regional Transport Authorities to some of the applicants; but the permits have not been issued to the persons concerned. The question raised for the consideration of the R.L.A. is whether in such cases it would be possible for the R.T.A. to attach the condition referred to.

2. It seems that there should be no difficulty in adding the condition about the use of the roads as proposed by the Secretary, State Transport Authority. The Home Department in para 3 of their office note (page 7 ante) have referred to the procedure which the Regional Transport Authority has to follow under section 55 of the Motor Vehicles Act, 1939. Under that section however the Regional Transport Authority has, before deciding whether to grant or refuse a public carrier's permit, to consider the various matters referred to therein. After the Regional Transport Authority has decided to grant a permit, that authority can attach to it all or any of the conditions specified in clause (b) of section 56. It seems feasible under section 56(b)(i) to attach to a permit a condition that the vehicle shall be used only on specified routes. So long as a permit has not been issued or handed over to the applicant it would appear to be open to the Regional Transport Authority to attach any of the conditions referable to clause (b) if section 56.

Sd/- P.M.Lad,

Additional Secretary to Government

U.R. to H.D. No. 15267, dated the 24th September 1951.

4-Cs/M.V.V/29.6

16863
13.8.51.

Submitted with reference to H.D. note at p.23 ante Rule 93(2) of the Bombay Motor Vehicles Rules, 1940, provides that not more than six persons in all in addition to the driver shall be carried in any goods vehicle. Sub-rule (4) however, empowers the R.T.A. to allow the carriage of a larger number of persons. It appears that in some cases the R.T.A.s while granting per - mission for the carriage of more than six persons imposed a condition that a temporary certificate of insurance should be obtained in respect of the persons carried in the vehicle. Such a condition was imposed in view of clause (a) of sub-section (2) of section 95 of the Motor Vehicles Act, 1939, as inserted by the Motor Vehicles (Amendment) Act, 1947(27of 1947) . It is found, however, that the amending Act of 1947 has not been brought into force. The State Transport Officer therefore considers that in view of section 95(2)(a) as it xx stands there is no sanction for insisting on an insurance certificate covering the risk in res - pect of persons exceeding six. The R.L.A. is requested to advise whether the view expressed by the S.T.O. is correct.

Sd/-

4-Cs.
M.V.V.
2/7.

Legal Department.

The view expressed by the State Transport Officer and the Home Department is correct.

Sd/- P.M.LAD,

Additional Secretary to Government.

U.R. to H.D. No. 14626, dated the 14th September 1951.

4-Cs.

M.V.V.
2/7.

LEGAL DEPARTMENT.

Breach of condition re. Additional Insurance

Motor Vehicles Rules,1940, Rule 93(4).

In his opinion No.14626, dated the 14th September 1951, the Additional Secretary has held that it is not open to the Regional Transport Authority while granting permission under sub-rule (4) of rule 93 to impose a condition that a temporary certificate of insurance should be obtained in respect of the persons carried in the vehicle. In view of this legal position, it is clear that the condition imposed by Government was without any legal sanction and its breach will not be punishable. No action can, therefore, be taken against Shri Deshpande.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 15559, dated the 29th September 1951.

4-Cs.

M.V.V.
2/7.

LEGAL DEPARTMENT.

The question raised by the Secretary, H.D. for consideration is whether under the Motor Vehicles Act, 1939, the State Government has power to grant the concession to carry overload. As stated in the H.D. office note the orders issued by that Department permitting the carriage of excess load appear to be in the nature of executive instructions. There is no specific provision in the Motor Vehicàss Act, 1939, empowering the State Government to authorize the carriage of passengers in excess of the number ~~of~~ for which it is licensed or of its seating capacity. The Act does not contain any provision authorising the State Government to issue any instructions for the guidance of the Regional Transport Authority as in section 44(3)(a) read with section 44(4) under which the State Transport Authority can issue directions for the purpose of co-ordinating and regulating the activities and plicies of the Regional Transport Authorities. Section 48(d)(iv) on the contrary empowers a Regional Transport Authority to attach to a stage carriage permit a condition that not more than a specified number of passengers shall be ~~xxxx~~ carried on any specified vehicle at any one time. The effect of the concession would be to modify this condition. But as stated above there does not appear any legal basis for such modification.

2. The H.R. in para. 2 of their note at page 16 ante has referred to rule 134A but that rule which appears in Chapter V of the Rules headed "construction",equipment and maintenance of motor vehicles" does not appear to be applicable here.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 16136, dated the 11th October 1951.

4-Cs.

M.V.V.
2/7/56.

Legal Department.

The question for the consideration of the R.L.A. is whether under clause (d) of section 62 of the Motor Vehicles Act, 1939, a Regional Transport Authority would be justified in holding in abeyance an application of a private operator for a substantive permit if it is satisfied that the Bombay State Road Transport Corporation intends to apply for a particular route within a reasonable time.

2. Clause (d) of section 62 of the Motor Vehicles Act, 1939 empowers the Regional Tranpsort Authority at its discretion and without following the procedure laid down in section 57, to grant permits to be effective for a limited period, not in any case to exceed four months, to authorise the use of a transport vehicle temporarily pending decision on an application for grant or renewal of a permit. This clause only contemplates that before a Regional Tranpport Authority can issue a temporary permit to an applicant there must be pending before it an application by him for the grant or renewal of a permit. In the present case no such existing application is contemplated; only the Regional Transport Authority is satisfied that the State Transport Corporation intends to apply for a permit on the same route. It does not appear it would be open to the Regional Transport Authority to take this factor into consideration. "A Regional Transport Authority is bound by the provisions of the Motor Vehicles Act and must act in accordance with the provisions of that Act" (per Malik C.J. in Moti Lal vs. Uttar Pradesh Government A.I.R. 1951 All. 257 at p.266). In that case the fact that the Uttar Pradesh Government intended in future to put some buses on the road was considered to be a wholly inadequate ground for the Regional Transport Authority to take into consideration. " The Regional

Transport Authority has to determine the question whether a permit should or should not be issued in accordance with the provisions of the Motor Vehicles Act and the Rules made thereunder. Any reason which is not a valid reason under the provisions of the Motor Vehicles Act cannot be taken into consideration by the Regional Transport Authority." (Ibid, p.264). It would not therefore be open to the Regional Transport Authority to take into consideration in deciding applications for the grant of permits the intention of the State Transport Corporation or any other privates operator to apply for permits on the same routes. State Transport Corporation has no better right than any other private operator under the Motor Vehicles Act as it stands. Moreover it appears that when an application for the grant of a permit has been made to the Regional Transport Authority that authority can either grant the permit or refuse to grant it (Cf. the opening words of sub-section (1) of section 47). It does not therefore appear feasible to hold the applications in abeyance to facilitate the making of an application by the State Transport Corporation or any other operator The proposal made by the Secretary, State Transport Authority is not legally feasible.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 16693, dated 20th October 1951.

4-Cs.

M.V.V.
2/7/56.

Legal Department.

It is competent for the Regional Transport Authority to issue under clause (c) of section 62 of the Motor Vehicles Act, 1939, a temporary permit in order to meet a particular temporary need. What is a temporary need would be a question of fact. If as reported by the Government of India and the State Tranpsort Officer there is a heavy movement of food ~~grains~~ grains from Bombay to up country dependent upon the import of food grains from outside, and as a consequence Railway wagons are not temporarily available for the carriage of spare parts and accessories of motor vehicles, it appears there would be no objection to considering that there is a temporary need. If, therefore, the State Transport Officer is satisfied that the need is temporary there would be no objection to issuing a temporary permit under clause (c) of section 62.

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to H.D. No. 17913, dated the 12th November 1951.

4-Cc.

M.V.V.
2/7/56.

LEGAL DEPARTMENT.

The view expressed at A of the letter dated 10th November 1951 of the Secretary, State Transport Authority, is not correct. The order of the Regional Transport Authority imposed a disqualification for 50 years. That order was not confirmed by the Appellate Committee of the State Transport Authority but was modified reducing the disqualification to a period of 25 years. It is this last order which is at present the final order and which is being challenged. That last order can be modified under the provisions of section 18(3) of the Motor Vehicles Act, 1939 by the Authority "by which the order was made."

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to H.D. No. 18142, dated the 15th November 1951.

4-Cs.

H.V.V.
2/7/56.

Section 74 of the Motor Vehicles Act, 1939, empowers the State Government or any authority authorized in this behalf by it, if satisfied about the circumstances specified in that section to prohibit ob restrict, subject to such exceptions and conditions as may be specified, the driving of motr vehicles or of any specified class of motor vehicles either generally in a specified areas or on a specified road. By notification No. 8413/5, dated the 24th April 1951, the Home Department has accordingly prohibited the driving of transport vehicles the laden weight of which exceeds 15000 lbs. or 17000 lbs. as the case may be. The proposal now made by the Public Works Department is to authorise Superintending Engineers of Executive Engineers to xpp allow in certain circumstances the driving of vehicles the laden weight of which exceeds the wieghts referred to above. The power to prohibit or restrict the driving of vehicles can be exercised by the State Government subject to exceptions and conditions as may be specified in the Notifisation. It appears that it would be feasible in view of this proviso to provide for an exception to the general restriction to the effect that vehicles the laden weight of which exceeds that specified in the Notification can be driven if, for example, the Superintending Engineer or Executive Engineer certifies that there is no objection to the driving of any particular vehicle. To achieve the object which the Public Works Department has in view an amendment of the Home Department Notification dated 24th April 1951 will be necessary.

Sd/- J.R. Dhurandhar,
20/11.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 18643, dated the 21st November 1951.

4-Cs./M.V.V./2.7

Office of the R.L.A.

Under clause (b)(iv) of section 56 of the Motor Vehicles Act, 1939, the Regional Transport Authority can attach to a public carrier's permit any prescribed condition appropriate to the services to be provided by the vehicle which the Regional Transport Authority thinks proper to impose in the public interest or with a x view to prevent uneconomic competition between road transport services. "Prescribed" means prescribed by rules made under the Act. For the purposes of this provision the State Tranpport Officer has proposed the additiona of the following sub-rule to rule 57 of the Bombay Motor Vehicles Rules, 1940 :-

> "(6) Subject to the provisions contained in section63, a Regional Transport Authority may impose or vary any conditions it deems fit for the proper control of the transport in the interest of the public, or for the prevention of uneconomic competition between road transport services."

The Home Department considers that the proposed sub-rule does not contain any condition at all and is vague; and doubts the validity of such a rule. The R.L.A. is requested to advise.

2. The view expressed by the Home Department appears to be correct. Under section 56(b)(iv) of the Motor Vehicles Act, 1939, it is competent for the Road Transport Authwohity to attach to a public carrier's permit a condition appropriate to the service to be provided by the vehicle etc.; but such a condition must be one of those prescribed by rules made by the State Government. As stated by Home Department the draft sub-rule proposed by the State Transport Officer does not provide for any specific conditions. On the contrary it proposes to authorise a Road Transport Authority to impose or vary any condition it deems fit. The proposed sub-rule would not be in order.

Sd/- J.R.Dhurandhar,
25.11

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19011, dated the 27th November 1951.

4-Cs./M.V.V./2.7.56.

Legal Department.

The presumption made at 'A' in the H.D. note is correct. The Additional Secretary has already made it clear in his opinion No. 14594, dated 14.9.1951, that both the Poona - Sangamner and Poona - Ahmednagar Roads fall within the jurisdiction of the R.T.A. Poona. Whether a ~~pmm~~ portion of the road falls within the territorial district of Ahmednagar is not material; for by the H. D. Notification dated 1-8-1949 both the ~~mroads~~ have been specifically excluded from the territorial extent of the R.T.A. Nasik.

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to H.D. No. 19231, dated the 30th November 1951.

4-Cs.

M.V.V.
2/7.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether under the provisions of the Motor Vehicles Act, 1939, it is competent for the Regional Transport Authority to grant one taxi permit only to one person. The question has arisen in view of the appeal preferred to the Appellate Committee of the State Transport Authority against the order passed by the Regional Transport Authority refusing to grant to the appellant more than one permit for a taxi.

Sub-section (1) of section 42 of the Motor Vehicles Act, 1939, provides inter alia that no owner of a transport vehicle (which expression includes a motor cab) shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used. Section 42 provides for the necessity of obtaining a permit if the owner of a motor vehicle proposes to use it as a transport vehicle. The necessity of obtaining a proper permit is the only restriction imposed upon the owner of a transport vehicle. That section does not provide nor is there any other provision in the Act which provides that no person shall own more than one taxi. A specific provision in the Motor Vehicles Act itself will be necessary in order to enforce such restriction for which purpose it will be necessary to amend the Act (Cf. R.L.A.'s opinion No. 13806 dated 30.9.1950). The order passed by the Regional Transport Authority in this case does not appear justifiable.

Sd/- J.R.Dhurandhar,
4/12.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 19455, dated the 4th December 1951.

4-Cs.

M.V.V.
2/7.

Legal Department.

The question raised for the consideration of the Remembrancer of Legal Affairs is whether Government can in appeal revise the order of the Regional Transport Authority, Baroda, which attached a condition restricting the number of passengers to be carried in a bus.

2. Under clause (a) of section 64 of the Motor Vehicles Act, 1939, any person aggrieved by any condition attached to a permit granted to him can appeal to the prescribed authority. Restricting the number of passengers who can be carried in a stage carriage is one of the conditions which the Regional Transport Authority can attach to a stage carriage permit under section 48 (d) (iv) of the Act. If the person who is granted the permit is aggrieved by that condition he can appeal to the authority prescribed for the purposes of section 64. In that case it would be possible for Government to revise the condition attached by the Regional Transport Authority and increase the number of passengers to be carried ; but such increase should not be by way of concession but on some reasonable ground such as the capacity of the bus, the State of the road etc.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 18888, dated the 24th November 1951.

4-Cs.

MV.V.
2/7/56.

Office of the R.L.A.

In accordance with the recommendations of the Environmental Hygiene Committee the State Transport Officer proposes to add a new rule 92-A to the Bombay Motor Vehicles Rules, 1940, as follows :-

"92-A. Disinfectation of public service vehicles with D.D.T. (1) No owner or driver of a public service vehicle shall cause or allow to be used such a vehicle unless it is disinfected with D.D.T. once in two months and a certificate to that effect is obtained from a duly licensed garage of a service station, where such work is carried out.

(2) Where licensed garage or service station as is referred to in sub-rule (1) does not exist, the owner or the driver in charge of every public service vehicle shall maintain a D.D.T. spraying equipment and shall cause the vehicle to be disinfected once in two months, and shall maintain a record of such disinfection in a Register provided for that purpose."

The question referred to the R.L.A. for consideration is whether under the Motor Vehicles Act, 1939, it would be feasible to make such a rule.

2. The Home Department in paragraph 4 of their note have referred to section 68 of the Motor Vehicles Act, 1939, which occurs in Chapter IV thereof having the heading "Control of Transport Vehicles". That section empowers the State Government to make rules for the purpose of carrying into effect the provisions of that Chapter. Sub-section (2) of that section which specifies some of the matters in respect of which rules can be made by the State Government is not exhaustive. That is clear from the words "without prejudice to the generality of the foregoing power" at the beginning of that sub-section and also clause (za) of that sub-section contemplates the making of rules in regard to the conveyance in stage or contract carriages of corpses or persons suffering

.....from any infectious or contagious disease and the inspection and disinfection of such carriages, if used for such purposes. Having regard to that provision, it will not be ultra vires of the Government under their rule-making power under clause (za) of sub-section (2) of section 68 to provide by rules for periodical disinfection of the public service vehicles.

Sd/- J.R.Dhurandhar,
24.11. .

Remembrancer of Legal Affairs.

U.R. to H.D . No. 18877, dated the 24th November 1951.

4-Cs.

U.V.V.
2.7.56.

Office of the R.L.A.

The condition of the roads is one of the matters which a Regional Transport Authority or the State Transport Authority shall have regard to under section 55 of the Motor Vehicles Act, 1939, in deciding whether to grant or refuse a public carrier's permit. If a Regional Transport Authority or the State Transport Authority wants to attach a condition to a public carrier's permit that it shall be used only on metalled roads, it would be competent to such authority, having regard to other matters particularly the matter specified in clause (a) of section 55, to add a proviso relaxing that condition that unmetalled or kutcha roads may be used whenever the vehicle is carrying Government goods such as food and other necessary supplies in scarcity areas.

Sd/- J.R.Dhurandhar,
13/12.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19448, dated the 13th December 1951.

4-Cs.

H.V.V.
2/7.

OFFICE OF THE R.L.A.

In his opinion No.16693, dated 20th October 1951, at pages 7-9 ante, the Additional Secretary had expressed the view that a Regional Transport Authority could not hold applications for grant of permits in abeyance to facilitate the making of an application by the State Transport Corporation. In connection with that view, the Secretary, H.D., observes that if an application is kept pending indefinitely it would be open to the applicant to go to the High Court and obtain a writ of mandamus and that the only defence of Government in that case would be that the applicant had not appealed to the State Transport Authority and to the State Government and had not exhausted all the remedies open to him. The R.L.A. is requested to advice whether the view expressed by the Secretary, H.D. is correct.

2. Under clause (a) of section 64 of the Motor Vehicles Act, 1939, any person aggrieved by the refusal of the Regional Transport Authority to grant a permit can appeal to the prescribe authority. If an application for the grant of permit is kept indefinitely pending it would amount to the non-exercise of the jurisdiction vested in the Regional Transport Authority under the Motor Vehicles Act. There is no refusal to grant a permit and no order has been actually passed and the remedy of appealing to the higher authorities would not, therefore, be open to the applicant. A Regional Transport Authority constituted under the Motor Vehicles Act is a quasi judicial body; and if it fails or refuses to exercise jurisdiction by conduct amounting to refusal (e.g. by keeping the application for the grant of permit pending for an indefinite period) an application for mandamus will lie. "Mandamus may be employed to require an inferior tribunal to exercise its judicial powers and functions, perform its judicial duties, exercise its judgment, or exercise its authority when it is its duty to do so in a matter within its jurisdiction." As in the case under contemplation it would not be open to the

applicant to go to the State Transport Authority or th Government in appeal, the defence proposed by the Secretary, H.D., would not be available in the application for the grant of a mandamus.

Sd/- J.R.Dhurandhar,
17/12.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 20175, dated the 18th December 1951.

4-Cs.

M.V.V.
2/7.